

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

LOREN A. BOWERS,

Petitioner,

v.

JEFF PREMO,

Respondent.

Case No. 6:16-cv-059-PK

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Paul Papak issued Findings and Recommendation in this case on January 10, 2018. ECF 44. Judge Papak recommended that Petitioner's petition for writ of habeas corpus be denied and that this Court should also deny a certificate of appealability because Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

Petitioner timely filed an objection. ECF 46. Petitioner objects to each of Judge Papak's findings that the post-conviction relief court was not unreasonable in determining that Petitioner was provided effective assistance of counsel. Petitioner also objects to Judge Papak's finding that several of Petitioner's claims for ineffectiveness that were included in Petitioner's briefing were not included in Petitioner's petition for habeas corpus, arguing that habeas petitions should be construed leniently. Despite Judge Papak's finding that these arguments were not raised in petition, he nevertheless considered the arguments on their merits, albeit briefly, and found them unpersuasive. Finally, Petitioner objects to Judge Papak's recommendation that this Court deny a certificate of Appealability. The Court has reviewed *de novo* those portions of Judge Papak's Findings and Recommendation to which Petitioner has objected, as well as Petitioner's objections and Respondent's response. The Court agrees with Judge Papak's reasoning regarding the reasonability of the post-conviction relief court's findings on the effective assistance of Petitioner's trial counsel and ADOPTS those portions of the Findings and Recommendation.

For those portions of a magistrate's findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed."); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate's findings and recommendations if objection is made, "but not otherwise"). Although in the absence of objections no review is required, the Magistrates Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ.

P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate’s recommendations for “clear error on the face of the record.”

For those portions of Judge Papak’s Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court **ADOPTS** Judge Papak’s Findings and Recommendation, ECF 44. Petitioner’s Petition for Writ of habeas Corpus (ECF 2) is DENIED. The Court declines to issue a Certificate of Appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 27th day of March, 2018.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge